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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/005,787

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EXAMINER

CAIN, EDWARD J

ART UNIT

PAPER NUMBER

1714

DATE MAILED: 04/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/005,787

Applicant(s)

TAYLOR ET AL.

Examiner

Callie E. Shosho

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 9-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicants' after-final amendment filed 3/14/06, which has been entered, overcomes all outstanding rejections of record.

2. The indicated allowability of claims 1-6 and 11-20 is withdrawn in view of the newly discovered reference(s) to Rankin (U.S. 4,127,423), Patel et al. (U.S. 5,710,115), Clapperton et al. (U.S. 6,090,762), and Mueller et al. (U.S. 6,230,804). Rejections based on the newly cited reference(s) follow.

3. Please note that while Examiner Shosho is responding to the after-final amendment filed 3/14/06, all future correspondence will be with Examiner Edward Cain.

Specification

4. It is noted that on page 1, lines 7-9 of the present specification applicants claim benefit of 60/246,886 "filed November 8, 2001". However, this is the filing date of the present application not 60/246,886. The correct filing date of 60/246,886 appears to be November 8, 2000. Clarification is requested.

It is noted that applicants oath/declaration also claims benefit to 60/246,886 filed "November 8, 2001".

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 9-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 and claim 10 has each been amended to recite “ethylene vinyl acetate and copolymers thereof”. The scope of the claim is confusing because it is not clear what is meant by or what is encompassed by this phrase. Does this refer to ethylene vinyl acetate copolymer as well as copolymer containing ethylene, vinyl acetate, and other additional monomers, i.e. copolymers thereof? Or does this refer to the composition comprising ethylene monomer and vinyl acetate monomer as well as copolymer of these monomers? Clarification is requested.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 5, 12-14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Rankin (U.S. 4,127,423).

Rankin discloses composition possessing basic pH, i.e. pH = 10.2-10.9, wherein the composition comprises polyvinyl alcohol, sodium chloride, sodium silicate, additive such as

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surfactant or bactericide, and water in amount of least 70 wt.%. The composition is free of toxic components (col.3, line 40-col.4, line 8).

In light of the above, it is clear that Rankin anticipates the present claims.

9. Claims 1-2, 5-6, and 11-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Patel et al. (U.S. 5,710,115).

Patel et al. discloses aqueous based composition possessing basic pH, i.e. pH = 8-13, wherein the composition comprises polyvinyl alcohol, sodium chloride, sodium silicate, sodium hydroxide, silicone foam suppressor, and additive such as surfactant. The composition is free of toxic components (col.3, lines 5-9, col.4, lines 54-55, col.6., lines 2-4, col.10, line 65-col.11, line 1, col.11, lines 19-20, col.19, line 48, and col.21, line 5).

In light of the above, it is clear that Patel anticipate the present claims.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patel et al. (U.S. 5,710,115).

The disclosure with respect to Patel et al. as described in paragraph 9 above is incorporated here by reference.

The difference between Patel et al. and the present claimed invention is the requirement in the claims of ethylene vinyl acetate.

Antwerpen et al., which is drawn to dishwashing composition as is Patel et al., disclose the use of copolymer obtained from ethylene and vinyl acetate as a color transfer inhibitor (col.3, lines 18-35 and 57-62, col.4, lines 46-48 and 59-67, and col.7, lines 15-17).

In light of the motivation for using copolymer obtained from ethylene and vinyl acetate disclosed by Antwerpen et al. as described above, it therefore would have been obvious to one of ordinary skill in the art to use such copolymer in the composition of Patel et al. as color transfer inhibitor, and thereby arrive at the claimed invention.

13. Claims 1-2, 5-6, and 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clapperton et al. (U.S. 6,090,762).

Clapperton et al. disclose aqueous based composition possessing basic pH, i.e. pH = 9-11, wherein the composition comprises polyvinyl alcohol, sodium chloride, sodium silicate, sodium hydroxide, silicone anti-foaming agent, and additive such as dye, anti-microbial, or surfactant. The composition is free of toxic components (col.13, lines 11-21 and 49, col.14, lines 35-38 and 66-67, col.20, lines 30-31, col.21, line 19, col.25, lines 14, 20-23, and 36-55, and col.26, lines 5-6 and 21-22).

While Clapperton et al. fails to exemplify the presently claimed composition nor can the claimed composition be “clearly envisaged” from Clapperton et al. as required to meet the standard of anticipation (cf. MPEP 2131.03), nevertheless, in light of the overlap between the claimed composition and the composition disclosed by Clapperton et al., absent a showing of criticality for the presently claimed composition, it is urged that it would have been within the bounds of routine experimentation, as well as the skill level of one of ordinary skill in the art, to

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use composition which is both disclosed by Clapperton et al. and encompassed within the scope of the present claims and thereby arrive at the claimed invention.

14. Claims 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clapperton et al. as applied to claims 1-2, 5-6, and 11-20 above, and further in view of Antwerpen et al. (U.S. 5,542,951).

The difference between Clapperton et al. and the present claimed invention is the requirement in the claims of ethylene vinyl acetate.

Antwerpen et al., which is drawn to laundry detergent composition as is Clapperton et al., disclose the use of copolymer obtained from ethylene and vinyl acetate as a color transfer inhibitor (col.3, lines 18-35 and 57-62, col.4, lines 46-48 and 59-67, and col.7, lines 15-17).

In light of the motivation for using copolymer obtained from ethylene and vinyl acetate disclosed by Antwerpen et al. as described above, it therefore would have been obvious to one of ordinary skill in the art to use such copolymer in the composition of Clapperton et al. as color transfer inhibitor, and thereby arrive at the claimed invention.

15. Claims 1-6 and 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller et al. (U.S. 6,230,804) in view of Brook et al. (U.S. 5,536,310).

Mueller et al. disclose composition comprising polyvinyl alcohol, sodium silicate, sodium chloride, silicone defoamer, additive, and sea water, i.e. naturally occurring salt containing water. It is disclosed that the amount of water can be varied to achieve desired density and pumpability and includes small amounts and large amounts of water which would clearly

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meet the requirement in present claim 12 regarding the amount of water. The composition is free of toxic components (col.15, lines 26-41, col.16, line 55, col.17, lines 5, 20-22, 31, and 39-40, and col.19, lines 1-11).

The difference between Mueller et al. and the present claimed invention is the requirement in the claims that the composition has basic pH.

Mueller et al. disclose cement composition as described above, however, Mueller et al. is silent with respect to the pH of the composition.

Brook et al., which is drawn to cement composition, disclose that the pH typical of cement compositions is 12-13.5, i.e. basic pH (col.2, lines 63-65).

In light of the above, it therefore would have been obvious to one of ordinary skill in the art to control the pH of the composition of Mueller et al. to 12-13.5 in order to produce effective cement composition, and thereby arrive at the claimed invention.

16. Claims 1-6 and 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller et al. (U.S. 6,230,804) in view of Childs et al. (U.S. 4,450,009).

Mueller et al. disclose composition comprising polyvinyl alcohol, sodium silicate, sodium chloride, silicone defoamer, additive, and sea water, i.e. naturally occurring salt containing water. It is disclosed that the amount of water can be varied to achieve desired density and pumpability and includes small amounts and large amounts of water which would clearly meet the requirement in present claim 12 regarding the amount of water. The composition is free of toxic components (col.15, lines 26-41, col.16, line 55, col.17, lines 5, 20-22, 31, and 39-40, and col.19, lines 1-11).

The difference between Mueller et al. and the present claimed invention is the requirement in the claims that the composition has basic pH and contains sodium hydroxide.

Mueller et al. disclose cement composition as described above, however, Mueller et al. is silent with respect to the pH of the composition and further, there is no disclosure of sodium hydroxide.

Childs et al., which is drawn to cement composition made from sea water, disclose adding sodium hydroxide in an amount to raise the pH of the composition to at least 12 in order to remove magnesium ions from the sea water which will eliminate the detrimental effect of the sea water on the slurry (col.1, lines 28-60 and col.3, line 63-col.4, line 28).

In light of the motivation for using sodium hydroxide and cement composition with specific pH disclosed by Childs et al. as described above, it therefore would have been obvious to one of ordinary skill in the art to use sodium hydroxide in the composition of Childs et al. in order to raise the pH of the composition to at least 12 and thus eliminate the deleterious effects of magnesium ions present in the composition from the sea water, and thereby arrive at the claimed invention.

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Cala (U.S. 3,953,379) discloses composition comprising polyvinyl alcohol, sodium chloride, water-soluble silicate, silicone containing foam depressant, sodium hydroxide, and additive, however, there is no disclosure regarding the pH of the composition as required in all the present claims.

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18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Callie E. Shosho whose telephone number is 571-272-1123. The examiner can normally be reached on Monday-Friday (6:30-4:00) Alternate Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Callie E. Shosho
Primary Examiner
Art Unit 1714

CS
4/18/06